IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6497 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL VIRABHAI RANCHHODBHAI BHUTKA, ADULT, OCCUPATION
Versus
STATE OF GUJARAT, NOTICE TO BESERVED UPON MR. V. S. SINHA,

Appearance:
1. Special Civil Application No. 6497 of 1987
MR KG VAKHARIA for Petitioner No. 1
MR SP SEN, AGP, for Respondent No. 1-2
(MR HL PATEL) for Respondent No. 3
SERVED BY AFFIX.-(R) for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 10/04/2002

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution, the petitioner has challenged the judgment and order passed by the Additional Chief Secretary Revenue Department (Appeals) in the State Government rejecting the petitioner's revision application challenging the order at Annexure A bearing

No.SRD-Land-Banas-6317 declining to entertain the petitioner's revision application against the judgment and order dated 15-1-1987 passed by the Collector, Banaskantha.

2. The petitioner's case is that the petitioner purchased the land admeasuring 1 acres and 26 gunthas in Block No.116 of village Gadh Taluka Palanpur by a registered sale deed dated 5-8-1986 from Amthaji Masungji Koli, respondent No.4 herein, after obtaining permission of the Deputy Collector, Palanpur vide his order No.Vatan- New Tenure-1956 dated 31-7-1986. The said order dated 31-7-1986 of the Deputy Collector came to be challenged by Patel Amubhai Paswabhai, respondent No.3 herein. However, in the said appeal filed on 29-9-1986, the present petitioner was not joined as a party and only the original owners Koli Amthabhai Jesangbhai and Koli Bhavabhai Kasabhai were joined as respondents. That appeal came to be allowed by the Collector on 15-1-1987 (Annexure B) on the ground that the land in question was a fragment and that the land was a new tenure land; was sold on 5-1-1971 in breach of the terms of the original grant and also on the ground that the Deputy Collector, had earlier issued notice dated 23-5-1986 for breach of terms of the grant but no express order was passed for withdrawing the said show cause notice. The Collector further observed that the appellant therein i.e. respondent No.3 herein claimed to be in possession of the land in question.

In any case, there is no dispute about the fact that the petitioner herein was not joined as a party to the said appeal. Respondents No.2 and 3 in the said appeal (Koli Amthabhai Jesangbhai and Koli Bhavabhai Kasabhai respectively respondent No.4 in this petition Amthaji Masungji) obviously had no interest in the land after having sold the land to the petitioner and, therefore, no representation was made by them at the hearing of the appeal before the Collector. When the petitioner preferred the revision application against the said order of the Collector before the Additional Chief Secretary, the revision application was not entertained on the ground that the petitioner claimed that the land was converted to old tenure in the year 1977 but the order to that effect was not produced.

3. While issuing notice on 9-12-1987 and admitting the petition on 9-4-1991, this Court granted ad-interim/ interim relief in favour of the petitioner by staying operation, execution and implementation of the orders of the Collector and the Additional Chief Secretary.

4. At the hearing of this petition, the learned counsel for the petitioner submits that the appellant before the Collector had no locus standi to challenge the permission dated 31-7-1986 granted by the Deputy Collector. It is further submitted that when the petitioner had purchased the land in question by a registered sale deed on 5-8-1986 in view of the permission granted by the Deputy Collector on 31-7-1986, the petitioner was a necessary party in the appeal filed for challenging the said permission dated 31-7-1986. Even though the appeal was filed on 29-9-1986, the petitioner was not joined as a party. It is, therefore, submitted that impugned order dated 15-1-1987 passed by the Collector was illegal as having been passed in contravention of the principles of natural justice. It is further submitted that the Additional Chief Secretary ought to have set aside the order of the Collector on this ground and required the parties to produce all relevant documents before the Collector.

5. On the other hand, Mr SP Sen, learned AGP for the State of Gujarat and the Collector, Banaskantha submits that since the question whether the land was converted into old tenure land was a crucial question, there was nothing wrong in the Additional Chief Secretary requiring the petitioner to produce the order in that behalf.

6. As far as respondent No.3 is concerned, he had earlier engaged an advocate who unfortunately expired during pendency of the petition and, therefore, notice was issued to respondent No.3 intimating him about the said fact. Thereafter, respondent No.3 has not appeared before the Court.

7. Having heard the learned counsel for the parties, it appears to the Court that when admittedly the order dated 31-7-1986 (Annexure C) passed by the Deputy Collector, Palanpur itself mentioned that permission was granted to sell the land within two months to Shri Virabhai Ranchhodbhai Bhutka i.e. the present petitioner, and the petitioner had purchased the land by a registered sale deed dated 5-8-1986, the Collector ought to have directed the appellant to join the present petitioner as a party respondent in the appeal especially because Koli Amthabhai Jesangbhai and Koli Bhavabhai Kasabhai were not interested in defending the order passed by the Deputy Collector permitting them to sell the land to the present petitioner. Hence, the impugned order dated 15-1-1987 passed by the Collector is required to be set aside and the matter is required to be remanded

to the Collector. The Collector shall hear and decide the appeal after the present petitioner is joined as a party respondent for which the petitioner shall make an application before the Collector. The Collector shall permit all the parties to lead such documentary and oral evidence as they may desire to lead and thereafter give them an opportunity of being heard and thereafter the Collector shall decide the matter in accordance with law.

8. In view of the above discussion, the impugned orders at Annexure`B' and `A' passed by the Collector and Additional Chief Secretary respectively are set aside and the appeal filed by Patel Amubhai Paswabhai, respondent No.3 herein shall stand restored before the Collector and the Collector shall give the parties an opportunity of leading documentary and/or oral evidence and thereafter decide the matter in accordance with law.

It is clarified that it will be open to the parties to raise all available contentions before the Collector. This Court has not expressed any opinion on any of the contentions except that the petitioner is a necessary party to the appeal filed before the Collector.

9. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah,J)

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